

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COMCAST CABLE
COMMUNICATIONS, LLC,

No. C 16-06180 WHA

Plaintiff,

v.

OPENTV, INC., and NAGRAVISION SA,

**CASE MANAGEMENT
ORDER RE PILOT SUMMARY
JUDGMENT MOTIONS**

Defendants.

In this patent action for declaratory judgment of non-infringement, in which over one hundred claims from 13 patents are asserted against plaintiff Comcast Cable Communications, LLC's accused products and services, the following procedure shall be used to more quickly and efficiently reach the merits. For this procedure, defendants and patent owners OpenTV, Inc., and Nagravision SA shall select one — and only one — claim, presumably their strongest case for infringement. Plaintiff and accused infringer Comcast shall also select one — and only one — claim, presumably its strongest case for non-infringement or invalidity. Each side shall then move for summary judgment on its chosen claim, to be heard on the normal 35-day track. Once Comcast files its motion, OpenTV and Nagravision may not “withdraw” their chosen claim, so they should take care to assert only claims they expect to win on.

The Court has reviewed the parties' jointly proposed schedule for these early summary judgment motions (Dkt. No. 78). The proposed schedule and deadlines are hereby incorporated

1 into and deemed a part of this order. To be clear, however, this order does not obviate or
2 otherwise alter the parties' obligations under the Federal Rules of Civil Procedure, our Civil
3 Local Rules, or our Patent Local Rules as to any claims other than the ones chosen for early
4 summary judgment. For example, any disclosures due thereunder must be timely made in full
5 as to all hundred-plus claims in suit. And, because "[t]he parties disagree on the scope of early
6 summary judgment motions" (*id.* at 3), this order further clarifies that each side's early
7 summary judgment motion should be as to *all* issues — including infringement, invalidity, or
8 both — for its chosen claim. The outcome of this exchange may (or may not) warrant an
9 injunction (if the asserted claims are as strong as OpenTV and NagraVision say) or terminating
10 or other sanctions (if the asserted claims are as weak as Comcast says). Those potential
11 remedies will be litigated soon after the motions for summary judgment are decided (depending,
12 of course, on the outcome). In addition to adjudicating the chosen claims on their merits and
13 indicating the relative strengths (or weaknesses) of both sides' positions, this procedure will
14 further serve to educate the undersigned judge about the overall technology at issue.

15 Both sides shall please refrain from attempting to delay this procedure on the basis that
16 more discovery is needed. OpenTV and NagraVision have had ample opportunity before this
17 point to reverse engineer the Comcast technology in question, and are in an even better position
18 to do so now that discovery is already underway in the ordinary course of this litigation. This
19 case management order does not interfere with the existing discovery schedule, but no requests
20 for extensions purportedly necessary in light of that schedule will be entertained.

21 Pursuant to the parties' proposed schedule, the early motions for summary judgment
22 must be filed by **JUNE 26**, to be heard on **AUGUST 3**. If issues of fact prevent summary
23 judgment, then we will have a trial on the disputed points soon thereafter, approximately three
24 weeks after the hearing. Both sides shall please plan their calendars accordingly.

25
26 **IT IS SO ORDERED.**

27
28 Dated: March 13, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE